

1970

# The Minnesota Supreme Court, 1969-1970

Minn. L. Rev. Editorial Board

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## THE MINNESOTA SUPREME COURT 1969-1970

*The Minnesota Supreme Court Note surveys selected decisions of the Minnesota Supreme Court [hereinafter referred to as the Minnesota court or simply the court] from October 1, 1969, to September 30, 1970. The cases selected were thought to represent new developments in Minnesota law and also to present perplexing questions common to most jurisdictions; accordingly the decisions have been evaluated in terms of Minnesota law but the Minnesota court's results have frequently been compared with the law of other jurisdictions so that the analysis is universally applicable. Also there are some "Case Briefs" of less significant decisions which may be of general interest to the Minnesota Bar. While the cases are discussed separately they are arranged according to the general legal issue involved. The Note also presents statistics on recent operations of the court.*

### THE TABLES [1969-1970]\*

The data contained in the following Tables summarize the work of the Minnesota Supreme Court from October, 1969, to October, 1970. So that the reader can evaluate these Tables comprehensively, a statement of their purposes and bases is presented here.

Tables I, II and III concentrate primarily on patterns of opinion-writing and voting among the individual justices. Table I tabulates the written opinions of each justice according to the disposition represented and categorizes the number of votes cast by him, indicating abstentions as well as dissents. The data for opinions written and for absences reflect the operation of the current system of divisional sittings. Included in this and other Tables are data for Mr. Justice Gallagher, a retired justice sitting pursuant to MINN. STAT. § 2.724, subd. 2 (1969) since his temporary assignment in 1963. Also included are data for the three district court judges who were assigned seriatim during 1969-1970. Table II lists the total number of opinions delivered during the period and classifies them according to whether the opinion was unanimous, per curiam or with a dissent or concurrence.

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\* The text and Tables immediately following were prepared under the supervision of Professor Charles W. Wolfram of the Law School in connection with his study of the caseload of the Minnesota Supreme Court.

This table also indicates the number of opinions delivered under the divisional sitting system. Table III endeavors to determine the alignment among the justices by measuring the extent of their disagreements. It records the number of instances in which the justices voted for opposite dispositions plus the number of instances in which the justices voted for the same disposition but did not join in an opinion. Table III includes per curiam dispositions as well as signed opinions.

Table IV categorizes by origin all of the opinions announced by the court during the period. The primary purpose is to show the approximate number of cases appealed from each judicial district or administrative agency and the number of cases that originated in the court itself. For this purpose, per curiam decisions and cases dismissed without consideration of the merits are counted as dispositions. The cases that originated in the supreme court are subdivided depending upon whether the court was reviewing the action of a lower court or agency or whether the case involved an entirely original proceeding in the supreme court. Table IV also indicates the disposition ordered where the court's decision explicitly required further consideration by the originating court or agency. In some instances, of course, further consideration might have been required even though no specific statement to this effect is contained in the opinion; such cases are not included in the "further disposition" data.

Table V indicates the general subject matter of the action that gave rise to the opinion of the court (not necessarily the same as the principle issue decided by the court). The enumeration includes cases originating in the court itself. In areas of high interest or frequent occurrence and which lend themselves to this treatment, the subjects are subdivided to indicate the subject matter more specifically. Table V is also designed to indicate the relative success of appeals by defendants and plaintiffs in the several kinds of cases. Since relative success in the immediate appeal is not always accurately measured by affirmance or reversal, the denomination of the result as "successful" or "unsuccessful" for the petitioning party has been employed.

TABLE I  
(1969-1970)

## ACTION OF INDIVIDUAL JUSTICES

	Opinions Written					Votes			
	Divisional Majority	En Banc Majority	Concurrences	Dissents	Totals	Majority <sup>a</sup>	Dissents	Divisional Absence	En Banc Abstention
Knutson, C.J. ....	1	9	0	2	12	309	3	14	0
Nelson, J. ....	32	8	0	0	40	219	1	104	0
Murphy, J. ....	22	6	0	1 <sup>b</sup>	29	186	2 <sup>b</sup>	135	0
Otis, J. ....	19	7	0	7	33	194	8	118	3
Rogosheske, J. ....	23	4	2	1	30	191	1	118	15
Sheran, J. <sup>c</sup> ....	28	6	2	1	36	221	3	102	0
Peterson, J. ....	20	7	0	1	28	191	4	127	4
Gallagher, J. <sup>d</sup> ....	25	4	0	0	29	197	0	128	1
Graff, J. <sup>e</sup> ....	5	0	0	0	5	17	0		
T.B. Knudson, J. <sup>f</sup> ..	10	1	0	0	11	51	0		
J.F. Murphy, J. <sup>g</sup> ...	12	0	0	0	12	43	0		
<i>Per Curiam</i> .....	57	19			76				
Totals .....	254	71	4	13	341		22	846	23

<sup>a</sup> Includes concurrences.

<sup>b</sup> Includes one dissent in a case in which the justice was not a sitting member of the division that heard the argument.

<sup>c</sup> Mr. Justice Robert J. Sheran retired from the court on July 1, 1970. Mr. Justice Fallon Kelly was appointed to fill the seat vacated and was sworn in on July 6, 1970. All opinions released during the remainder of the term after Mr. Justice Kelly was sworn in had been argued and submitted before he had become a member of the court.

<sup>d</sup> Mr. Justice Gallagher sits as a retired justice.

<sup>e</sup> The Hon. John W. Graff, Judge of the Ramsey County District Court, acted as a temporary associate justice of the court from November 3, 1969, to January 5, 1970. See The Supreme Court of Minnesota, 285 Minn. iii n.2 (1970).

<sup>f</sup> The Hon. Theodore B. Knudson, Judge of the Hennepin County District Court, acted as a temporary associate justice of the court from January 6, 1970, to April 12, 1970. See The Supreme Court of Minnesota, 286 Minn. iii n.3 (1970).

<sup>g</sup> The Hon. James F. Murphy, Judge of the Itasca County District Court, acted as a temporary associate justice of the court from April 13, 1970, to June 30, 1970. See the Supreme Court of Minnesota, 287 Minn. iii n.3 (1970).

TABLE II  
(1969-1970)

CLASSIFICATION OF WRITTEN OPINIONS

	Number of Cases			Percentage of Total		
	Division	En Banc	Total	Division	En Banc	Total
Unanimous _____	194	42	236	59.7	12.9	72.6
With Concurrence						
Only _____	0	2	2	.0	0.6	0.6
With Dissent _____	4	9	13	1.2	2.8	4.0
<i>Per Curiam</i> _____	57	19	76	17.5	5.8	23.3
Totals _____	255	71	327*	78.8	21.2	100.5*

\* Totals more than the decided number of cases because of the inclusion under both "With Dissent" and "*Per Curiam*" of two *per curiam* decisions (one divisional and the other en banc) in which there were dissents. Percentages are based on the actual number of decisions (325) and total more than 100% because of the double-counting.

TABLE III\*  
(1969-1970)

## ALIGNMENT OF JUSTICES

		J.F. Murphy	T.B. Knudson	Graff	Gallagher	Peterson	Sheran	Rogosheske	Otis	Murphy	Nelson
Knutson.....	D	0	0	0	2	4	5	4	7	4	2
	C	0	0	0	0	0	0	2	1	0	0
	T	0	0	0	2	4	5	6	8	4	2
	N	37	50	17	186	181	216	178	193	177	192
Nelson .....	D	0	0	0	1	4	3	2	8	2	
	C	0	0	0	0	0	0	2	1	0	
	T	0	0	0	1	4	3	4	9	2	
	N	36	43	9	112	120	112	78	155	171	
Murphy <sup>a</sup> .....	D	0	0	0	1	4	1	2	6		
	C	0	0	0	0	0	0	2	1		
	T	0	0	0	1	4	1	4	7		
	N	17	40	9	95	93	94	81	156		
Otis.....	D	0	1	0	6	3	7	5			
	C	0	0	0	1	1	1	1			
	T	0	1	0	7	4	8	6			
	N	28	39	8	95	75	118	112			
Rogosheske....	D	0	0	0	1	3	2				
	C	0	0	0	2	2	2				
	T	0	0	0	3	5	4				
	N	16	12	8	130	117	163				
Sheran.....	D	0	0	0	2	4					
	C	0	0	0	0	0					
	T	0	0	0	2	4					
	N	22	20	8	171	170					
Peterson <sup>b</sup> .....	D	0	1	0	2						
	C	0	0	0	0						
	T	0	1	0	2						
	N	21	8	9	153						
Gallagher.....	D	0	0	0							
	C	0	0	0							
	T	0	0	0							
	N	0	15	0							

\* "D" represents decisions of the court in which the justices voted for opposite results. "C" represents decisions in which the justices voted

for the same result, but did not join together in an opinion. "T" represents the total number of decisions in which the justices did not join together in an opinion, *i.e.*, the total number of decisions on which the justices disagreed. "N" represents the total number of decisions in which both justices participated. The table includes *per curiam* opinions.

<sup>a</sup> Not recorded here is a dissent by Mr. Justice Murphy in a case heard by a division of which he was not a member. The division was composed of Chief Justice Knutson, and Justices Otis, Rogosheske, Sheran and Gallagher. *Andrews v. Hoss*, 286 Minn. 514, 174 N.W.2d 134 (1970).

<sup>b</sup> Not recorded here is a concurring dissent by Mr. Justice Peterson in a case heard by a division of which he was not a member. The division was composed of Justices Nelson, Murphy, Otis, Sheran and Gallagher, with Mr. Justice Otis dissenting. *State v. Lundstrom*, 285 Minn. 130, 171 N.W.2d 718 (1969).

TABLE IV  
(1969-1970)  
SOURCE AND DISPOSITION OF CASES APPEALED

District		Total	Disposition			Disposition Ordered	
			Affirmed	Reversed	Dismissed	Remanded	New Trial
1st Judicial Dist.	1	19	10	8 <sup>a</sup>	1	4	2
2nd "	2	63 <sup>b</sup>	44	14 <sup>c d</sup>	5	6	4
3rd "	3	21	17	4 <sup>c d</sup>		2	
4th "	4	103	77 <sup>e</sup>	18 <sup>f</sup>	8	6	2
5th "	5	17	13	4		1	1
6th "	6	16	14	1	1	1	
7th "	7	11	8	3 <sup>g</sup>		1	1
8th "	8	12	7	4 <sup>h</sup>	1		1
9th "	9	11	8	2 <sup>d i</sup>	1	1	1
10th "	10	23	16	6 <sup>h i j</sup>	1	4	1
Workmen's Compensation Commission		19	13	6 <sup>g f</sup>		5	
Tax Court		3	2	1			
Department of Manpower Services		1	1				
Commerce Commission		1	1				
Total		320	231	71	18	31	13

Supreme Court Original	Non Review	Review	Absolute	Discharged
Prohibition	3	3	2	4
Mandamus		4	1	3
Certification		1		1
Certiorari		25	6	19
Discipline	2		1	1
Total	325	33	10	28

<sup>a</sup> Includes one case reversed and a new trial granted on a limited issue.

<sup>b</sup> Includes one case affirmed and remanded.

<sup>c</sup> Includes two cases affirmed in part and reversed in part.

<sup>d</sup> Includes one case remanded for further proceedings without a reversal being ordered.

<sup>e</sup> Includes one case affirmed on condition of remittitur.

<sup>f</sup> Includes two cases remanded for further proceeding without a reversal being ordered.

<sup>g</sup> Includes one case reversed in part and remanded.

<sup>h</sup> Includes one case affirmed in part and reversed in part.

<sup>i</sup> Includes one case reversed and remanded with directions to dismiss without prejudice.

<sup>j</sup> Includes one case reversed in part, affirmed in part and remanded for a new trial as to one defendant.



TABLE V  
(1969-1970)

## SUBJECT MATTER OF UNDERLYING DISPUTE

Subject Matter	Total	Sub Total	Disposition on Appeal			
			Appealed by Plaintiff		Appealed by Defendant	
			Successful	Unsuccessful	Successful	Unsuccessful
Contracts _____	27					
Commercial Paper _____		3			1	2
Construction _____		3			1	2
Lease _____		2			1	1
Personal Service _____		1				1
Sale-Realty _____		11	1	4	2	4
Sale-Other _____		5	2			3
Other-Business _____		2		1		1
Corporations & _____						
Securities _____	2	2	2			
Creditor Security _____	3					
Mortgage Foreclosure _____		2			1	1
Other _____		1				1
Criminal Law _____	101					
Appeal _____		72	1	6	10	55
Habeas Corpus _____		29	1		2	26
Domestic Relations _____	17					
Divorce _____		7		1	1	5
Adoption/Custody _____		10		5		5
Insurance _____	16					
Motor Vehicle _____		10	1	5	2	2
Property Casualty _____		2		1		1
Accident & Disability _____		1				1
Other _____		3			1	2
Labor Law _____	4					
Public Employee _____		3		2	1	
Pension _____		1	1			
Property _____	24					
Assessment _____		4		1	1	2
Eminent Domain _____		11	1	2	1	7
Title _____		5		1	1	3
Zoning _____		4			2	2
Regulatory Agency _____	7					
Attorney Discipline _____		2	1			1
Public Service _____		3			2	1
Banking _____		1				1
Water Resources _____		1		1		

Subject Matter	Total	Sub Total	Disposition on Appeal			
			Appealed by Plaintiff		Appealed by Defendant	
			Successful	Unsuccessful	Successful	Unsuccessful
State and Local						
Government .....	11					
Elections .....		2	2			
School Districts .....		5		3	1	1
City Annexation .....		1		1		
Other .....		3		2		1
Taxation .....	7					
Income .....		2	1	1		
Inheritance .....		1				1
Personal Property .....		2		1		1
Real Property .....		2		2		
Torts .....	77					
Motor Vehicle						
Negligence .....		43	7	20	1	15
Product Liability .....		5		2	1	2
Civil Damage Act .....		1	1			
Fraud .....		5				5
Medical						
Malpractice .....		4		3	1	
Other .....		19	4	8	2	5
Trusts & Estates .....	4					
Decedents' Estates—						
Administration .....		4		2		2
Welfare .....	2					
Medical Assistance .....		1		1		
Unemployment						
Compensation .....		1		1		
Workmen's Compen-						
sation .....	19	19	4	6	1	8
Not Identified .....	4	4	1	3		
Totals .....	325	325	31	86	37	171